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Letter dated 18 April 2008 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

It is my great honour and pleasure to transmit to you the final report from the Austrian Initiative 2004-2008 on the United Nations Security Council and the rule of law, which was presented by the Austrian State Secretary, Hans Winkler, and the Rapporteur of the Austrian Initiative, Professor Simon Chesterman, at the United Nations on 7 April 2008 (see annex). The report contains 17 concrete recommendations how the Security Council could support the rule of law in its various fields of activity in order to strengthen an international system based on rules. We hope that this report will contribute to the important work of the United Nations in promoting a rules-based international system and maintaining international peace and security under the rule of law.

Four years ago, Austria launched an initiative on the theme "The role of the Security Council in strengthening a rules-based international system". Starting in November 2004, the Austrian Mission, in cooperation with the Institute for International Law and Justice at New York University School of Law, convened a series of seven panel discussions on various aspects of the central theme, as well as a retreat of experts at Alpbach, Austria, in August 2007. We were very honoured by the great interest and wide participation of Member States in these events. Further information on the Austrian rule of law initiative, including electronic copies of the final report and reports of previous panel discussions, can be downloaded from the website of the Austrian Mission at http://www.bmeia.gv.at/newyorkov.

I should be grateful if you would have the present letter and the attached final report circulated as a document of the General Assembly, under item 81 of the preliminary list, and of the Security Council.

(*Signed*) Gerhard **Pfanzelter**
Ambassador

* A/63/50.

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Annex to the letter dated 18 April 2008 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

THE UN SECURITY COUNCIL AND THE RULE OF LAW

The Role of the Security Council in Strengthening a Rules-based International System

Final Report and Recommendations from the Austrian Initiative, 2004-2008

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Table of Contents

Executive Summary	i
Summary of Recommendations	ii
Introduction	1
I. The International Rule of Law	3
II. Strengthening the Rule of Law Within States	6
III. The Security Council as a Creature of Law	10
IV. The Security Council as Legislator	12
V. The Security Council as Judge	14
VI. The Security Council and Individual Rights	16
Conclusion	19
Appendix I: Agendas from the Austrian Initiative Panel Series, 2004–2008	20
Appendix II: Alpbach Retreat: The Security Council and the Rule of Law, 25–27 August 2007	24

Executive Summary

(i) The UN Security Council is the most powerful multilateral political institution. It has grown well beyond its initial function as a political forum and serves important legal functions. Traditionally, this included determining that a threat to the peace, breach of the peace, or act of aggression had occurred and prescribing specific, legally binding obligations on Member States under Chapter VII of the UN Charter. Today it embraces establishing complex regimes to enforce its decisions and passing resolutions of general rather than specific application. These expanded powers can facilitate swift and decisive action, but have raised questions about the legal context within which the Council operates and the extent to which the Council itself adheres to the rule of law.

(ii) The "rule of law" is widely embraced at the national and international levels without much precision as to what the term means. At the national level, it requires a government of laws, the supremacy of the law, and equality before the law. Strengthening a rules-based international system by applying these principles at the international level would increase predictability of behaviour, prevent arbitrariness, and ensure basic fairness. For the Council, greater use of existing law and greater emphasis on its own grounding in the law will ensure greater respect for its decisions.

(iii) In addition to post-conflict peacebuilding, the rule of law is now also seen as a tool for preventing or resolving conflicts. The preparedness of Member States to take collective action, through the Council, was endorsed, in limited circumstances, at the 2005 World Summit by the adoption of the Responsibility to Protect. It should be supported by firm opposition to impunity and greater efforts to establish or re-establish the rule of law in fragile States. The rule of law must also apply to those who intervene.

(iv) The Council is a creature of law but there is no formal process for reviewing its decisions; the ultimate sanctions on its authority are political. These include challenges to the Council's authority through the General Assembly, or individual or collective refusal to comply with its decisions. It is in no one's interest to push these political limits. For its part, the Council should limit itself to using its extraordinary powers for extraordinary purposes. When it is necessary to pass resolutions of a legislative character, respect for them will be enhanced by a process that ensures transparency, participation, and accountability. When the Council contemplates judicial functions, it should draw on existing institutions of international law.

(v) Sanctions targeted at individuals have presented a challenge to the authority of the Council: legal proceedings have been commenced in various jurisdictions and there is evidence that sanctions are not always applied rigorously. The Council should be proactive in further improving "fair and clear procedures" to protect the rights of individuals affected by its decisions, complying with minimum standards and providing on its own for periodic review.

(vi) The Security Council is most legitimate and most effective when it submits itself to the rule of law. Though the Council does not operate free of legal limits, the most important limit on the Council is self-restraint. Member States' preparedness to recognize the authority of the Council depends in significant part on how responsible and accountable it is — and is seen to be — in the use of its extraordinary powers. All Member States and the Security Council itself thus have an interest in promoting the rule of law and strengthening a rules-based international system.

Summary of Recommendations

Recommendation 1.

The Security Council should emphasize the importance of the rule of law in dealing with matters on its agenda. This embraces reference to upholding and promoting international law, and ensuring that its own decisions are firmly rooted in that body of law, including the Charter of the United Nations, general principles of law, international human rights law, international humanitarian law, and international criminal law.

Recommendation 2.

Acknowledging that the Council's powers derive from and are implemented through law will ensure greater respect for Council decisions. As part of a commitment to the rule of law, the Council should adopt formal rules of procedure rather than continuing to rely on provisional rules.

Recommendation 3.

When establishing UN operations, the Council should give greater weight to establishing or re-establishing the rule of law. Such efforts may include transitional justice mechanisms but also efforts to build mechanisms for peaceful resolutions of disputes. In a period of transition, it may be necessary to establish temporary institutions to combat impunity, prevent revenge killings, and lay the foundations of more sustainable order.

Recommendation 4.

The Council should, working together with other parts of the UN system, in particular the Peacebuilding Commission, the Rule of Law Coordination and Resource Group, and the Rule of Law Unit, pay particular regard to ensuring the sustainability of rule of law assistance measures after the end of a UN operation.

Recommendation 5.

When taking measures to maintain international peace and security, the Council should support criminal justice mechanisms and confirm its opposition to impunity. Where local institutions are unwilling or unable to prosecute those responsible for international crimes, the Council should consider appropriate measures to encourage or compel prosecution, including referral of a matter to the International Criminal Court as foreseen under the Rome Statute, as well as to ensure cooperation in order to bring perpetrators to justice.

Recommendation 6.

The Council should be prepared to act for the international community in exercising the Responsibility to Protect. As stated at the 2005 World Summit, this should be in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

Recommendation 7.

In order to prevent conflict, as well as to stabilize a post-conflict environment, the Council should seek to strengthen its cooperation with regional arrangements and organizations that can support the rule of law at the regional level.

Recommendation 8.

The Council should pay special attention to the impact of armed conflict on women and their important role in conflict resolution, including peace negotiations and peacebuilding, and ensure more effective and coherent implementation of resolution 1325 (2000) on Women, Peace, and Security. The Council should reiterate its call upon the Secretary-General to appoint more women as Special Representatives or Special Envoys, including as heads of UN operations.

Recommendation 9.

The Council should ensure that all UN efforts to restore peace and security themselves respect the rule of law. When authorizing a UN operation the Council should take appropriate measures to support the implementation of the Secretary-General's zero-tolerance policy on sexual exploitation and abuse by UN personnel, the recommendations in the Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations as well as the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse. In particular:

(i) the Council should encourage Member States contributing or seconding personnel to take appropriate preventative action, including the conduct of pre-deployment training, and to be in a position to hold their nationals accountable for criminal conduct;

(ii) the Council should support the Secretary General's efforts to seek formal assurances from troop contributing countries (TCCs) that they will exercise jurisdiction over their personnel;

(iii) the Council should affirm its commitment to put victims at the centre of its attention by expressing its support for the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse.

Recommendation 10.

The Council should limit itself to using its extraordinary powers for extraordinary purposes. The exercise of such powers should be limited in time and it should be subject to periodic review; as a rule the Council should allow for representations by affected States (such as under Articles 31 and 32 of the UN Charter) and, where possible, individuals. In general the Council should not decide that which does not need to be decided; it should err on the side of provisional responses rather than permanent solutions.

Recommendation 11.

When the Council adopts a resolution of a legislative character that is general rather than particular in effect, the legitimacy of and respect for that resolution will be enhanced by a process that ensures transparency, participation, and accountability. This should include:

(i) the holding of open debates on any such proposals;

(ii) wide consultation with the membership of the United Nations and other specially affected parties; and

(iii) a procedure to review the resolution within an appropriate timeframe.

Recommendation 12.

As any "legislative resolution" is an exceptional matter, it should, as a rule, terminate after a period of time set by the Council in the resolution (a "sunset clause") unless there is an affirmative decision by the Council to renew it.

Recommendation 13.

The Council should support and draw more frequently on existing judicial institutions of international law. This includes:

(i) promoting peaceful settlement of disputes before the International Court of Justice (ICJ);

(ii) requesting advisory opinions from the ICJ; and

(iii) referring matters to the International Criminal Court.

Recommendation 14.

The Council should establish ad hoc judicial institutions only in exceptional circumstances in order to avoid the proliferation of costly new courts and tribunals and the fragmentation of international law.

Recommendation 15.

The Security Council should be proactive in further improving "fair and clear procedures" to protect the rights of individuals affected by its decisions. These should include, as minimum standards:

(i) the right to be informed of measures taken by the Council and to know the case against him or her, including a statement of the case and information as to how requests for review and exemptions may be made;

(ii) the right to be heard (via submissions in writing) within a reasonable time by the relevant decision-making body and with assistance or representation by counsel; and

(iii) the right to review by an effective, impartial, and independent mechanism with the ability to provide a remedy, such as the lifting of the measure or compensation.

Recommendation 16.

The Council should itself, on its own initiative, periodically review targeted individual sanctions, especially the freezing of assets. The frequency of such review should be proportionate to the rights and interests involved.

Recommendation 17.

Building on recent innovations, such as the creation of the focal point, the Council should invite the Secretary-General to present it with options to further strengthen the legitimacy and effectiveness of sanctions regimes, paying particular regard to the need to protect sources and methods of information, as well as to protect the rights of individuals by upholding the minimum standards, including the right to review.

Introduction

1. The United Nations Charter established the Security Council as a political organ with primary responsibility for international peace and security. Its decisions are binding on all Member States and it is generally regarded as the most powerful and important international institution.

2. In practice, the Council's actual authority depends on agreement between the five permanent members of the Council and the legitimacy accorded to the Council by the membership of the United Nations. Though its effectiveness was limited during the Cold War, the 1990s saw a great expansion in Council activity. Between 1946 and 1989 it met 2,903 times and adopted 646 resolutions, averaging fewer than 15 a year; in the following decade it met 1,183 times and adopted 638 resolutions, an average of about 64 per year. In its first 44 years, 24 Security Council resolutions cited or used the enforcement powers contained in Chapter VII of the UN Charter; by 1993 the Council was adopting that many such resolutions every year. The Council has also expanded the range of its activities, including the establishment of international criminal tribunals, the maintenance of complex sanctions regimes, the protection of civilians, and the temporary administration of territory. Following the September 11, 2001, attacks in the United States, the Council assumed even greater importance in combating terrorism and the proliferation of weapons of mass destruction.

3. In this way the Security Council has grown beyond its initial function as a political forum and frequently serves important legal functions: establishing binding rules of general application, making determinations of law or fact, and overseeing the implementation of its decisions. These new functions of the Council — as legislator, judge, and executive — have made possible swift and decisive action in response to perceived threats to international peace and security on the basis of international law. At the same time, however, they have raised questions about the legal parameters that determine how the Council's new functions are exercised.

4. Beginning in 2004, the Permanent Mission of Austria to the United Nations, together with the Institute for International Law and Justice at New York University School of Law, organized a series of panel discussions to examine the "Role of the Security Council in Strengthening a Rules-Based International System". Bringing together representatives of the diplomatic, UN, and academic communities, these discussions considered the Council's role as "world legislator" (November 2004), "world judge" (October 2005), and "world executive" (October 2006). Thematic panels also examined the nature of a rules-based international system (May 2005) and the relationship between the Council and the individual (March 2007). These formal sessions were supplemented by an international advisory group that provided guidance on and substantive contributions to the project and a retreat of experts in Alpbach, Austria (August 2007). Draft conclusions of the initiative were discussed at a wrap-up panel in New York (November 2007). The final report will be presented at a panel in New York (April 2008). An appendix to this document lists the agendas of the various panels.

5. This report summarizes key findings and proposes concrete recommendations that would enhance the role of the Council in strengthening a rules-based international system. Section I examines what is meant by "the rule of law" in international affairs before considering in section II how this concept has been used by international organizations, in particular the United Nations and the Security Council. Section III discusses how such concepts might apply to the Council itself,

before considering specific cases of Council action: quasi-legislative resolutions in section IV, and quasi-judicial functions in section V. Section VI discusses particular challenges to Council authority that have arisen in the context of sanctions targeted at individuals, suggesting ways in which the Council might respond that would enhance the Council's legitimacy without undermining the effectiveness of the sanctions regime.

6. Recommendations appear in bold text in the report. These are intended to be pragmatic and realistic. They exclude proposals that would require amending the Charter or look narrowly at the foreign policy of specific States. They represent an attempt to take into account the interests of large and small States, permanent and non-permanent members of the Council, and developing and developed States. They are presented here as a contribution for further discussion to support the Council's role in strengthening a rules-based international system and maintaining international peace and security under the rule of law.

I. The International Rule of Law

7. At the United Nations World Summit in September 2005, Member States unanimously recognized the need for "universal adherence to and implementation of the rule of law at both the national and international levels" and reaffirmed their commitment to "an international order based on the rule of law and international law".[1] This echoed earlier calls in documents such as the 1970 Declaration on Friendly Relations, which referred to the "promotion of the rule of law among nations",[2] and the Millennium Declaration, in which Member States resolved to "strengthen respect for the rule of law in international as in national affairs".[3]

8. Such a high degree of consensus on the virtues of the rule of law is possible in part because of relative vagueness as to its meaning. Within national legal systems there are longstanding debates over whether the rule of law is limited to formal aspects of a legal system, such as its institutions and procedures, or should include substantive goals such as protection of specific rights or the achievement of particular economic ends. There are also significant differences between the rule of law as it is understood in common law and civil law systems, as well as in other legal traditions.

9. Further complications arise when one applies the rule of law to the international level. The historical origin of the rule of law lies in efforts to regularize and limit the powers of a sovereign — the rule of law is thus distinct from "rule of man", implying power exercised at the whim of an absolute ruler, and from "rule by law", whereby a ruler exercised power in a non-arbitrary fashion but was not him- or herself bound by law in any meaningful sense. In a national legal order, the sovereign exists in a vertical hierarchy with other subjects of law; at the international level, however, sovereignty tends to be conceived of as remaining with States, existing in a horizontal plane of sovereign equality.

10. In 2004 UN Secretary-General Kofi Annan provided an expansive definition of the rule of law as "a concept at the very heart of the Organization's mission. It refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."[4]

11. From this and a survey of legal traditions three basic elements of the rule of law can be identified. First, the powers of the sovereign may not be exercised arbitrarily. This incorporates the rejection of "rule of man" and requires that laws be prospective, accessible, and clear. Secondly, the law must apply also to the sovereign and instruments of the State, with an independent institution such as a judiciary to apply the law to specific cases. This implies a distinction from "rule by law". Thirdly, the law must apply to all subjects of the law equally, offering equal protection without

1 GA Res. 60/1 (2005), para. 134.

2 GA Res. 2625 (XXV).

3 GA Res. 55/2 (2000), para. 9.

4 UN Doc. S/2004/616 (2004), para. 6. See also UN Doc. A/61/636-S/2006/980 (2006).

prejudicial discrimination. The law should be of general application and consistent implementation; it should be capable of being obeyed. These elements of the core definition are usually promulgated in national constitutions and may be summarized as (i) a government of laws, (ii) the supremacy of the law, and (iii) equality before the law.

12. The "international rule of law" may be understood as the application of these rule of law principles to relations between States, as well as other subjects and objects of international law. Not all concepts will translate directly, however. If the domestic legal order may be thought of as a vertical hierarchy, the "anarchical society" lacks such an ordering principle. Applying the rule of law to the international level thus requires an examination of the functions that it is intended to serve.

13. The first aspect, government of laws, requires non-arbitrariness in the exercise of power. Moves towards the "international rule of law" in this area would include further codification of the content of international law as well as the manner in which it is created; rule of law concepts such as clarity are undermined by fragmentation of the legal order[5] and assertions that legally indeterminate categories of "legitimacy" exist alongside determinations of legality. In the case of the Council, continued reliance on provisional rules of procedure — rather than adopting formal rules under Article 30 of the UN Charter — are a small and easily-remedied example of ongoing indeterminacy in the work of an important institution.

14. The second aspect, supremacy of the law, distinguishes the rule of law from rule by law. This distinction is less applicable to the international legal system, however, where the primary question is not the relationship between subject and sovereign but between subject and subject. In such a regime the relevance of concepts such as separation of powers is less important than the possibility of determinative answers to legal questions. Rule of law advances would include greater acceptance of the compulsory jurisdiction of the International Court of Justice (ICJ) and other independent tribunals, and confirmation that international law applies to international organizations in general and to the UN Security Council in particular.

15. The third aspect of the core definition, equality before the law, raises the question of who the true subject of law is. Equality of individual human beings before the law is a formal constraint on the exercise of public power by State institutions; it has a very different meaning in the context of sovereign equality of States. The individual's relationship to the State is defined by its coerciveness: one does not normally choose the State to the laws of which one is subject. Legal systems frequently treat juridical persons, such as corporations, differently from natural persons; it therefore seems unnecessary to overemphasize the formal equality of States as such. Steps towards an international rule of law in this area would include more general and consistent application of international law to States and other entities. It might also entail amelioration of structural irregularities such as the veto power over Security Council decisions presently enjoyed by the permanent members of the Council, though that is beyond the scope of the present report.

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5 Cf. UN Doc. A/CN.4/L.682 (2006).

Recommendation 1.

The Security Council should emphasize the importance of the rule of law in dealing with matters on its agenda. This embraces reference to upholding and promoting international law, and ensuring that its own decisions are firmly rooted in that body of law, including the Charter of the United Nations, general principles of law, international human rights law, international humanitarian law, and international criminal law.

Recommendation 2.

Acknowledging that the Council's powers derive from and are implemented through law will ensure greater respect for Council decisions. As part of a commitment to the rule of law, the Council should adopt formal rules of procedure rather than continuing to rely on provisional rules.

II. Strengthening the Rule of Law Within States

16. Human rights treaties since the 1948 Universal Declaration of Human Rights have advocated the rule of law as the foundation of a rights-respecting State; development actors, including donor States, have since the 1960s promoted the rule of law as essential for economic growth; and more recently security actors, notably the Security Council, have promoted the rule of law as a form of conflict resolution.

17. Apart from a preambular reference in relation to the deterioration of law and order in the Congo in 1961,[6] the Council first used the words "rule of law" in resolution 1040 (1996), where it expressed its support for the Secretary-General's efforts to promote "national reconciliation, democracy, security and the rule of law in Burundi."[7] (The French text rendered rule of law as "*le rétablissement de l'ordre*".) Many peacekeeping operations have subsequently had important rule of law components, such as those in Guatemala (1997), the Democratic Republic of the Congo (1999 -), Liberia (2003 –), Côte d'Ivoire (2004 –), and Haiti (2004 –). The mandates for such missions tend to be broad, calling for the "re-establishment" or "restoration and maintenance" of the rule of law, without explaining what this might entail. In practice the dominant activities have tended to be training of police, justice, and prison personnel; assisting institution-building; advising on law reform issues; and monitoring, with the emphasis on the judicial sector and human rights law. Less attention has been paid, for example, to land law despite its importance to economic development and as a potential source of conflict.

18. In two situations, Kosovo (1999 –) and East Timor/Timor-Leste (1999-2002), the United Nations has had direct responsibility for the administration of territory, including control of police and prison services and administration of the judiciary. Similar powers were exercised in Bosnia and Herzegovina through the Office of the High Representative from 1996.

19. In addition to supporting or supplanting domestic rule of law institutions, the Council has created international criminal ad-hoc tribunals for trials arising from the violent conflicts in former Yugoslavia (1991–99) and Rwanda (1994). Hybrid tribunals, such as the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, and the Special Tribunal for Lebanon, represent an attempt to blend international supervision with local ownership and development of national capacity. The Special Court for Sierra Leone was set up at the "request" of the Council in resolution 1315 (2000), while the Special Tribunal for Lebanon was established with Council authority substituting for agreement of one of the parties.[8]

20. The Council has also exercised its power under the Rome Statute to refer a matter to the International Criminal Court, as it did in March 2005 with respect to the situation in Darfur, Sudan.[9]

21. This preparedness of the Council to act in support of law within States was endorsed at the 2005 World Summit, which embraced the Responsibility to Protect. Member States cited their

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6 SC Res. 161B (1961), preamble.

7 SC Res. 1040 (1996), para. 2.

8 See below section V.

9 SC Res. 1593 (2003), para. 1.

preparedness to take collective action, through the Council, where peaceful means are inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing, or crimes against humanity.[10]

22. There is no question, today, that supporting the rule of law when it breaks down within States is an important function of the Council. Action is needed, however, to consolidate the work of the Council in combating impunity, to affirm the importance of the rule of law in all UN operations, and to ensure the sustainability of rule of law assistance measures through improved coordination with bodies such as the newly established Rule of Law Coordination and Resource Group and its Rule of Law Unit[11] and the Peacebuilding Commission.[12]

Recommendation 3.

When establishing UN operations, the Council should give greater weight to establishing or re-establishing the rule of law. Such efforts may include transitional justice mechanisms but also efforts to build mechanisms for peaceful resolutions of disputes. In a period of transition, it may be necessary to establish temporary institutions to combat impunity, prevent revenge killings, and lay the foundations of more sustainable order.

Recommendation 4.

The Council should, working together with other parts of the UN system, in particular the Peacebuilding Commission, the Rule of Law Coordination and Resource Group, and the Rule of Law Unit, pay particular regard to ensuring the sustainability of rule of law assistance measures after the end of a UN operation.

Recommendation 5.

When taking measures to maintain international peace and security, the Council should support criminal justice mechanisms and confirm its opposition to impunity. Where local institutions are unwilling or unable to prosecute those responsible for international crimes, the Council should consider appropriate measures to encourage or compel prosecution, including referral of a matter to the International Criminal Court as foreseen under the Rome Statute, as well as to ensure cooperation in order to bring perpetrators to justice.

Recommendation 6.

The Council should be prepared to act for the international community in exercising the Responsibility to Protect. As stated at the 2005 World Summit, this should be in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as

10 GA Res. 60/1 (2005), para. 139; cf. also SC Res. 1674 (2006), para. 4.

11 UN Doc. A/61/636-S/2006/980 (2006).

12 Cf. GA Res. 60/180 (2005), para. 16.

appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

23. In addition, the Council could draw more effectively on two sets of actors in supporting its efforts to prevent conflict or establish peace: at the regional level, institutions such as the African Union, the OSCE, and the Council of Europe should be encouraged to support the rule of law; at the national level, seven years after the adoption of resolution 1325 (2000) the Council's efforts to include women in peacebuilding — and the Secretary-General's efforts to appoint high-level women[13] — have struggled to move beyond the level of rhetoric.

Recommendation 7.

In order to prevent conflict, as well as to stabilize a post-conflict environment, the Council should seek to strengthen its cooperation with regional arrangements and organizations that can support the rule of law at the regional level.[14]

Recommendation 8.

The Council should pay special attention to the impact of armed conflict on women and their important role in conflict resolution, including peace negotiations and peacebuilding, and ensure more effective and coherent implementation of resolution 1325 (2000) on Women, Peace, and Security. The Council should reiterate its call upon the Secretary-General to appoint more women as Special Representatives or Special Envoys, including as heads of UN operations.[15]

24. Nothing has done more to undermine the credibility of those who act in the Council's name than when those who are sent to protect a vulnerable population themselves engage in abuse. After-the-fact investigations of specific allegations of misconduct of UN personnel are an important element to strengthen accountability, but remain an inadequate response if not complemented by appropriate preventive action and measures to support the victims. The Council has an interest in ensuring the existence of effective institutions and procedures to prevent and prosecute abuse and, while ensuring appropriate safeguards are in place to protect the rights of both victim and accused, to offer effective remedies against individuals who do wrong.

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13 The first female special representative of the Secretary-General (SRSG) was appointed in 1992. In 2002 the Secretary-General set a target of fifty percent of women in high-level positions. UN Doc. S/2002/1154 (2002), para. 44. By 2005 there were two female SRSGs. In late 2007 there was only one.

14 Cf. S/PRST/2007/7 (2007).

15 Cf. S/PRST/2007/40 (2007).

Recommendation 9.

The Council should ensure that all UN efforts to restore peace and security themselves respect the rule of law. When authorizing a UN operation the Council should take appropriate measures to support the implementation of the Secretary-General's zero-tolerance policy on sexual exploitation and abuse by UN personnel, the recommendations in the Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations[16] as well as the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse.[17] In particular:

(i) the Council should encourage Member States contributing or seconding personnel to take appropriate preventative action, including the conduct of pre-deployment training, and to be in a position to hold their nationals accountable for criminal conduct;[18]

(ii) the Council should support the Secretary General's efforts to seek formal assurances from troop contributing countries (TCCs) that they will exercise jurisdiction over their personnel;[19]

(iii) the Council should affirm its commitment to put victims at the centre of its attention by expressing its support for the Comprehensive Strategy on Assistance and Support to Victims of Sexual Exploitation and Abuse.

16 UN Doc. A/59/710 (2005).

17 GA Res. 62/214 (2007); cf. also UN Doc. A/62/595 (2007).

18 Cf. UN Doc. A/62/329 (2007), para. 69 (b).

19 UN Doc. A/59/710 (2005), para. 78; see also UN Doc. A/45/594 (1990), Annex, para. 48.

III. The Security Council as a Creature of Law

25. The rule of law has thus been invoked with increasing frequency at the international level, supported by greater resources, and with deeper and more lasting effects. The Security Council has played a central role in this expansion of the rule of law as an instrument, a role that raises the question of how the rule of law might apply to the Council itself.

26. The centralization of legal authority in the modern State arose in part because the ends of security required the transfer of the means necessary to maintain that security. Thomas Hobbes called the resulting central power Leviathan. It is occasionally argued that something similar is or should be happening in the international system. Yet if there were some conscious effort to elevate the Security Council to the status of an international Leviathan, it would be necessary to provide it with the resources and the information necessary to do that job effectively. This has not happened. Instead, the Council operates with minimal Secretariat resources and depends almost entirely on the Member States for information.[20]

27. Lack of independent capacity has not, of course, prevented the Council from acting. It is clear that the delegates to the San Francisco conference in 1945 did not intend to establish a world government. The Council today does not act as one, but its powers have grown significantly through practice.

28. In part this activism is tolerated due to the Charter mechanism of each principal organ determining its own competence; in part it is encouraged by the Council's primary responsibility for international peace and security; and in part it is driven by the modest size of the Council and the role played by the five permanent members — especially during the periods of broad agreement among those countries on the appropriate response to certain incidents in the early 1990s and following the attacks of September 11, 2001.

29. It is generally acknowledged that the Security Council's powers are subject to the UN Charter and norms of *jus cogens*. The absence of formal review mechanisms may nevertheless appear to be a prohibitive problem to establishing any practical check on the Council's expansive interpretation of its powers. Some checks do exist, however. First, at the very least, the Council's own voting rules are a check on the unfettered exercise of those powers. Secondly, the General Assembly could challenge the Council's actions through a censure resolution,[21] question them through a request for an advisory opinion of the ICJ, or curtail them through its control of the United Nations budget. Thirdly, the issue may be raised in national and international courts as an incidental question in a case before it, as happened in the *Lockerbie* case before the ICJ, the *Tadic* case before the International Criminal Tribunal for the former Yugoslavia (ICTY), and the cases concerning targeted financial sanctions before the European Court of First Instance and the European Court of Justice.[22] And finally,

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20 This section draws on observations by Martti Koskenniemi at the panel convened in November 2004.

21 UN Charter, Art. 10, provides that the General Assembly "may discuss any questions or any matters ... relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters." Art. 12 precludes the Assembly from making recommendations with regard to a particular dispute or situation unless the Council so requests.

22 See below para. 42.

ultimate accountability lies in the respect accorded to the Council's decisions: if the Council's powers were stretched beyond credibility, States might simply ignore the expression of those powers and refuse to comply.

30. Accountability is intended to bolster the legitimacy of the Council's decisions. It may be helpful, therefore, to distinguish between appropriately "political" functions and those where more structured forms of accountability are possible. In the latter situation, having and giving reasons for decisions — including, as appropriate, input from States and other actors not on the Council prior to decisions and responding to challenges after them — would be a useful first step.

Recommendation 10.

The Council should limit itself to using its extraordinary powers for extraordinary purposes. The exercise of such powers should be limited in time and it should be subject to periodic review; as a rule the Council should allow for representations by affected States (such as under Articles 31 and 32 of the UN Charter) and, where possible, individuals. In general the Council should not decide that which does not need to be decided; it should err on the side of provisional responses rather than permanent solutions.

IV. The Security Council as Legislator

31. The scope of the Council's expanding powers will not be determined by a constitutional court, but through the tension between ends-driven demands of responding effectively to perceived threats to peace and security, and means-focused requirements of legitimacy.

32. That tension between effectiveness and legitimacy plays out most clearly in the passage of quasi-legislative resolutions.[23] The most prominent such resolutions were adopted in response to a specific crisis, but drafted in language of general application: resolution 1373 (2001) on terrorism was passed in response to the September 11, 2001, attacks on the United States; resolution 1540 (2004) on proliferation of weapons of mass destruction came after revelations concerning the A.Q. Khan network; and resolution 1566 (2004) on terrorism followed the terrorist attack in Beslan, Russia.

33. Legislation by Council decisions under Chapter VII of the UN Charter is a tantalizing short-cut to law. Years of negotiations over international instruments related to the prevention and suppression of international terrorism and the proliferation of weapons of mass destruction may be contrasted with the swift adoption of resolutions 1373 (2001), 1540 (2004) and 1566 (2004). The same holds true for the Rome Statute establishing the International Criminal Court as compared to the swift creation of the ICTY and its counterpart for Rwanda, or the establishment of the Special Tribunal for Lebanon. Unlike the ICTY and ICTR, resolution 1757 (2007) provided for the Lebanon tribunal to be created by Council authority under Chapter VII in the event that Lebanon did not execute within eleven days an "agreement" with the United Nations to establish that tribunal.

34. The temptations of legislation by Council fiat must be balanced, however, by a recognition that implementation depends on compliance by Member States. And if the effectiveness of the implementation of Council decisions depends on participation by Member States, the legitimacy of those decisions may depend on participation by Member States through their involvement in the decision-making process.

35. The Charter established the Council as an organ to deter instability, to police breaches of the peace, and to act swiftly to achieve these ends. These virtues of the Council as a police officer are precisely its vices as a legislator. As the Council is not a representative body, any "legislative" resolution should be adopted only after a process that seeks to address the legitimate concerns of the wider membership of the United Nations. Any such resolution should, moreover, be acknowledged by the Council as an exception to the normal law-making process.

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23 This section draws on observations by Thomas M. Franck at the panel convened in November 2004.

Recommendation 11.

When the Council adopts a resolution of a legislative character that is general rather than particular in effect, the legitimacy of and respect for that resolution will be enhanced by a process that ensures transparency, participation, and accountability. This should include:

(i) the holding of open debates on any such proposals;

(ii) wide consultation with the membership of the United Nations and other specially affected parties; and

(iii) a procedure to review the resolution within an appropriate timeframe.

Recommendation 12.

As any "legislative resolution" is an exceptional matter, it should, as a rule, terminate after a period of time set by the Council in the resolution (a "sunset clause") unless there is an affirmative decision by the Council to renew it.[24]

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24 Sunset clauses are most commonly used in the context of activities such as UN operations that incur cost to the organizations (UNMIK is a rare exception). Such clauses have also been used, however, to authorize extraordinary legal measures such as the guarantees of non-prosecution by the International Criminal Court offered by resolutions 1422 (2002) and 1487 (2003). See below para. 39. With respect to criminal tribunals jurisdiction may be limited in time (e.g. the ICTR's jurisdiction over the calendar year 1994), but a sunset clause should not normally be used to limit its existence — such a deadline would be an invitation to fugitives to remain at large. Sunset clauses would also be inappropriate with respect to the Council's role in adding acts to the list constituting aggression under GA Res. 3314 (XXIX) (1974).

V. The Security Council as Judge

36. As the Security Council's powers have expanded it is arguable that it has also taken on judicial functions. Among other things, the Council has established international tribunals with criminal jurisdiction over individuals, created exceptions to the jurisdiction of the International Criminal Court, ruled on border disputes between Iraq and Kuwait and established a compensation commission to award damages suffered due Iraq's invasion, and set up an international criminal investigation commission. This increasing scope of its powers raises a number of questions: of competence, of applicable safeguards, and of the Security Council's relationship to other bodies.

37. As indicated earlier, the Council's powers are subject to the UN Charter and norms of *jus cogens*.[25] While the UN Charter establishes the ICJ as the "principal judicial organ" of the United Nations, the Charter is not conclusive as to whether the Security Council, in carrying out its specific duties under its primary responsibility to maintain international peace and security, might also assume judicial functions, or as to its relationship to international courts. The lack of a separation of powers in the Charter is compounded by the fact that each UN organ determines the scope of its own competence under the Charter. The ICTY confirmed in the 1995 *Tadic* case the Security Council's competence to create a tribunal of its kind; today it is generally accepted that the Security Council has the power to establish such tribunals.

38. On the question of safeguards, the need for a swift and effective response to a threat to international peace and security might require broad measures and generally preclude the application of the same safeguards that would apply to domestic courts. This raises questions of legitimacy in two discrete areas: when the Council intercedes in the exercise of jurisdiction by duly constituted tribunals, and when the Council itself acts in a manner that affects the rights and obligations of individuals or States.

39. Distinct problems arise when considering the relationship between the Security Council and its creations. Once a judicial tribunal comes into being, it enjoys certain powers of its own that make it independent of the organ that created it. This has raised special concerns in hybrid tribunals — in Sierra Leone, Cambodia, and Lebanon — that enjoy an ambiguous relationship to both the domestic and international jurisdictions. Other concerns arise with respect to the International Criminal Court: set up as a separate international organization independent from the United Nations, its independence was tested by efforts by the Security Council to create exemptions from its jurisdiction through the operation of resolutions 1422 (2002) and 1487 (2003).[26] The role of the Security Council with regard to the definition of the crime of aggression, eventually to be included in the Rome Statute at the upcoming ICC Review Conference, is still under discussion.

40. The tendency to create new, ad hoc institutions has not always been effective and has certainly been inefficient. It has also contributed to the fragmentation of international law. There are existing institutions to which the Council could turn, but in each case it has done so only once: only once

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25 See above para. 29.

26 These resolutions provided that the International Criminal Court would not investigate or prosecute officials from a State not party to the Rome Statute, extending that provision on an annual basis. A further proposed renewal was withdrawn by the United States in 2004 during the controversy arising from abuse of prisoners in Iraq. This section draws on observations by Richard Goldstone at the panel convened in October 2005.

referring a matter to the ICJ, in the Corfu Channel case through resolution 22 (1947); only once requesting an advisory opinion from that Court, in relation to Namibia in resolution 284 (1970); and only once referring a matter to the International Criminal Court in resolution 1593 (2003) on Darfur, Sudan. Despite the paucity of practice, these establish clear precedent for further action by the Council.

Recommendation 13.

The Council should support and draw more frequently on existing judicial institutions of international law. This includes:

(i) promoting peaceful settlement of disputes before the International Court of Justice (ICJ);

(ii) requesting advisory opinions from the ICJ; and

(iii) referring matters to the International Criminal Court.

Recommendation 14.

The Council should establish ad hoc judicial institutions only in exceptional circumstances in order to avoid the proliferation of costly new courts and tribunals and the fragmentation of international law.

VI. The Security Council and Individual Rights

41. One area of particular concern in relation to Council action has been the use of targeted sanctions. Developed in the 1990s to limit the collateral impact of economic sanctions, these are intended to put pressure on specific individuals or limit their ability to undermine international peace and security, such as through financing terrorism.

42. The regimes successfully reduced the humanitarian consequences of sanctions but have been criticized for the manner in which individuals may come to be selected for such coercion without either transparency or the possibility of formal review. Challenges have arisen in a number of forums, most prominently the European Court of First Instance. In *Yusuf, Kadi*, and other cases, plaintiffs claimed that the freezing of their financial assets by a regulation of the European Community taken pursuant to a decision made by the Council's Al Qaeda and Taliban Sanctions Committee violated their rights. The Court decided it could review the decision by the UN Committee only within the narrow parameters of *jus cogens*. Beyond that, the judges noted that there was no international review mechanism available to the applicants. (These and two other cases are on appeal to the European Court of Justice.)[27]

43. In the 2005 World Summit Outcome Document, Member States called upon the Security Council, with the support of the Secretary-General, to ensure that "fair and clear" procedures exist for the listing and delisting of individuals and entities on targeted sanctions lists.[28] Secretary-General Kofi Annan responded in June 2006 with a non-paper reaffirming that targeted sanctions can be an effective means of combating, among other things, the threat of terrorism, but cautioning that such sanctions will only remain useful to the extent that they are effective and seen to be legitimate; that legitimacy depends on procedural fairness and the availability of a remedy to persons wrongly harmed by such lists. He noted four basic elements that should serve as minimum standards for such a regime.[29]

(a) A person against whom measures have been taken by the Security Council has the right to be informed of those measures and to know the case against him or her as soon as, and to the extent, possible. The notification should include a statement of the case and information as to how requests for review and exemptions may be made. An adequate statement of the case requires the prior determination of clear criteria for listing.

(b) Such a person has the right to be heard (via submissions in writing) within a reasonable time by the relevant decision-making body. That right should include the ability to directly access the decision-making body, possibly through a focal point in the Secretariat, as well as the right to be assisted or represented by counsel. Time limits should be set for the consideration of the case.

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27 Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities (Court of First Instance of the European Communities, Case T- 306/01, 21 September 2005); Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities (Court of First Instance of the European Communities, Case T-315/01, 21 September 2005); Faraj Hassan v. Council of the European Union and Commission of the European Communities (Court of First Instance of the European Communities, Case T 49/04, 12 July 2006); Chafiq Ayadi v. Council of the European Union (Court of First Instance of the European Communities, Case T-253/02, 12 July 2006). See also the recent Opinion of Advocate General Poiares Maduro regarding the case of Yassin Abdullah Kadi v. Council of the European Union and Commission of the European Communities (Case C-402/05 P, 16 January 2008). Cases available at http://curia.eu.int.

28 GA Res. 60/1 (2005), para. 109.

29 The unpublished letter by the Secretary-General dated 15 June 2006 was referred to in the Security Council debate on 22 June 2006: UN Doc. S/PV.5474 (2006), p. 5. The four minimum standards are incorporated in the recommendations below.

(c) Such a person has the right to review by an effective review mechanism. The effectiveness of this mechanism will depend on its impartiality, degree of independence and ability to provide an effective remedy (lifting of the measure and/or, under specific conditions to be determined, compensation).

(d) The Security Council should, possibly through its committees, periodically review on its own initiative "targeted individual sanctions", especially the freeze of assets, in order to mitigate the risk of violating the right to property and related human rights. The frequency of such review should be proportionate to the rights and interests involved.

44. Subsequent Security Council resolutions marked significant progress towards achieving the goal set by the World Summit. Resolution 1730 (2006) strengthened procedural safeguards to protect the rights of individuals by establishing a focal point to receive delisting requests, and adopted specific procedures to govern the handling of delisting requests; these apply to all sanctions committees established by the Security Council.[30] In resolution 1732 (2006) the Council welcomed the report of the Informal Working Group on General Issues of Sanctions,[31] containing recommendations and best practices on how to improve sanctions, and requested its subsidiary bodies to take note of it.

45. Resolution 1735 (2006) further amended procedures for listing and delisting of the Al-Qaida/Taliban sanctions committee established pursuant to resolution 1267 (1999), including provision for informing persons of their designation on a list and outlining criteria to be considered in a delisting request.

46. It has been questioned, however, whether by adopting these measures the Council has satisfied the need for "fair and clear procedures" in this area. Recent and pending cases in national and regional courts — most prominently those currently on appeal to the European Court of Justice — will prove instructive to future implementation of targeted sanctions and the protection of individual rights. The alternative is that sanctions will become ineffective and not be applied rigorously; indeed, the fact that some States are hesitant to submit new names to be included on sanctions lists and others are not seeking formal humanitarian exemptions may be evidence that this is happening already. [32]

47. There has been much discussion inside and outside the United Nations of possible mechanisms to review listing and delisting decisions of the Council. Such a mechanism could, theoretically, take numerous forms — all exemplified in past practice of the Council — such as a full appeal to a specially constituted tribunal (comparable to the ICTY), a form of administrative review (comparable to the UN Compensation Commission), a confidential review process (comparable to the Detention Review Commission created by the UN Mission in Kosovo in 2001), or an ombudsman institution (comparable to those established in Kosovo and East Timor).[33] Given the political sensitivities involved, however, in practice the establishment of an independent quasi-judicial or administrative review seems difficult to achieve. In the short term, the most likely advance would be to support the decision-making process of the relevant sanctions committees in conducting their own review of listing and delisting decisions. This might include establishment of a

30 UN Doc. S/2007/178 (2007).

31 UN Doc. S/2006/997 (2006).

32 See, e.g., UN Doc. S/2007/677 (2007), para. 26; UN Doc S/2006/154 (2006), Annex, para. 57.

33 See generally Strengthening UN Targeted Sanctions Through Fair and Clear Procedures (Watson Institute for International Studies, Providence, RI, 30 March 2006), at <http://www.watsoninstitute.org/TFS>.

small review panel of experts to examine delisting requests and make a recommendation to the Security Council committee.[34]

Recommendation 15.

The Security Council should be proactive in further improving "fair and clear procedures" to protect the rights of individuals affected by its decisions. These should include, as minimum standards:

(i) the right to be informed of measures taken by the Council and to know the case against him or her, including a statement of the case and information as to how requests for review and exemptions may be made;

(ii) the right to be heard (via submissions in writing) within a reasonable time by the relevant decision-making body and with assistance or representation by counsel; and

(iii) the right to review by an effective, impartial and independent mechanism with the ability to provide a remedy, such as the lifting of the measure or compensation.[35]

Recommendation 16.

The Council should itself, on its own initiative, periodically review targeted individual sanctions, especially the freezing of assets. The frequency of such review should be proportionate to the rights and interests involved.[36]

Recommendation 17.

Building on recent innovations, such as the creation of the focal point, the Council should invite the Secretary-General to present it with options to further strengthen the legitimacy and effectiveness of sanctions regimes, paying particular regard to the need to protect sources and methods of information, as well as to protect the rights of individuals by upholding the minimum standards, including the right to review.

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34 Cf. the initiative to strengthen targeted sanctions and due process by Denmark, Liechtenstein, Sweden, and Switzerland, which have put forward a proposal inspired by the example of the World Bank inspection panels to establish a review panel of three independent, impartial, and judicially qualified persons to review listing decisions. Petitioners may request a delisting decision through the focal point. The review panel may recommend to the sanctions committee either delisting or the rejection of the petition. The recommendations of the panel are to be made public. The final decision, however, would rest with the sanctions committee. See Discussion Paper on Supplementary Guidelines for the Review of Sanctions Committees' Listing Decisions and Explanatory Memorandum (presented by Professor Michael Bothe at a Roundtable in New York on 8 November 2007).

35 Cf. UN Doc S/PV.5474 (2006), p. 5.

36 Cf. UN Doc S/PV.5474 (2006), p. 5. (This was included by the Secretary-General as a fourth minimum standard.). See also UN Doc. A/61/267 (2006), para. 34, and UN Doc. S/2007/677 (2007), paras. 39-48.

Conclusion

48. The Council is an extraordinarily powerful instrument for promoting the rule of law at both national and international levels, but this is most legitimate and most effective when the Council submits itself to the rule of law.

49. The Council does not operate free of legal constraint. In strict legal terms, this means that the Council's powers are exercised subject to the Charter and norms of *jus cogens*. More importantly, however, the Council's authority derives from the rule of law — respect for its decisions depends on respect for the Charter and international law more generally. The most important limitation on the Council's powers is therefore self-restraint. In the absence of a constitutional court to sit in judgment of how that restraint is exercised, accountability, such as it is, tends to be exercised only through the possibility of extreme reactions: cutting off funding or disregarding Council resolutions. Without Member State support, Council decisions are mere wishful thinking.[37]

50. Such challenges to Council authority are blunt instruments and not to be entertained lightly. But they highlight the function of law in the context of Council action: not to serve as a wall but as a hedgerow; not to block Council decisions but to channel them away from danger.[38]

51. The Council's effectiveness as a political actor and its legitimacy as a legal actor are connected: Member States' preparedness to recognize the authority of the Council depends in significant part on how responsible and accountable it is — and is seen to be — in the use of its extraordinary powers. All Member States and the Security Council itself thus have an interest in promoting the rule of law and strengthening a rules-based international system.

37 This section draws on observations by Alain Pellet at the panel convened in October 2006.

38 This section draws on observations by David Caron at the panel convened in October 2005.

Appendix I:

Agendas from the Austrian Initiative Panel Series, 2004–2008

1. The Security Council as World Legislator?

Theoretical and Practical Aspects of Law-making by the Security Council

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Thursday, 4 November 2004, 3pm-5:30pm

Welcome:	**Under-Secretary-General Nicolas Michel** Legal Counsel, United Nations
Introduction:	**H.E. Mr. Hans Winkler** Legal Adviser, Austrian Federal Ministry for Foreign Affairs **Dr. Simon Chesterman** Institute for International Law and Justice, New York University School of Law
Chair:	**H.E. Mr. Mohamed Bennouna** Chairman of the 6th Committee, Permanent Representative of Morocco
Panellists:	**Professor Georges Abi-Saab** Graduate Institute of International Studies, Geneva **Ms. Carol Bellamy** Executive Director, UNICEF **Professor Thomas M. Franck** New York University School of Law **Professor Martti Koskenniemi** University of Helsinki, Member of the International Law Commission
Discussant:	**Dr. Pemmaraju Sreenivasa Rao** Member of the International Law Commission

2. Who Needs Rules?

The Prospects of a Rules-based International System

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Thursday, 5 May 2005, 3pm-6pm

Welcome:	**H.E. Mr. Jean Ping** President of the 59th UN General Assembly
Chair:	**Dr. Simon Chesterman** Institute for International Law and Justice, New York University School of Law
Panellists:	**Professor Martha Finnemore** George Washington University **Professor Benedict Kingsbury** New York University School of Law **Professor Gerhard Hafner** University of Vienna **Dr. Abiodun Williams** Executive Office of the Secretary-General

3. The Security Council as World Judge?

The Powers and Limits of the UN Security Council in Relation to Judicial Functions

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Thursday, 27 October 2005, 3pm-5:30pm

Welcome:	**H.E. Mr. Ferdinand Trauttmansdorff** Legal Adviser, Austrian Federal Ministry for Foreign Affairs **Under-Secretary-General Nicolas Michel** Legal Counsel, United Nations
Chair:	**H.E. Mr. Juan Antonio Yáñez-Barñuevo** Permanent Representative of Spain to the United Nations, Chairman of the 6th Committee
Panellists:	**Professor David Caron** University of California at Berkeley **Justice Richard J. Goldstone** former Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda **Professor Paula Escarameia** International Law Commission **Judge Nabil Elaraby** International Court of Justice

4. The Security Council as World Executive?

The Implementation and Enforcement of Rules by the Security Council

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Thursday, 26 October 2006, 12:30pm-3pm

Welcome:	**H.E. Mr. Ferdinand Trauttmansdorff** Legal Adviser, Austrian Federal Ministry for Foreign Affairs **Dr. Simon Chesterman** New York University School of Law
Chair:	**H.E. Mr. Juan Manuel Gómez Robledo** Deputy Permanent Representative of Mexico to the United Nations, Chairman of the 6th Committee
Panellists:	**Professor Alain Pellet** University of Paris X - Nanterre **Sir Kieran Prendergast** former Under-Secretary-General for Political Affairs **H.E. Ms. Ellen Løj** Permanent Representative of Denmark to the United Nations

5. The Security Council and the Individual:
Rights and Responsibilities

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Tuesday, 27 March 2007, 3pm-5:30pm

Welcome:	**H.E. Mr. Gerhard Pfanzelter** Permanent Representative of Austria to the United Nations
Chair:	**Professor Thomas M. Franck** New York University School of Law
Panellists:	**Under-Secretary-General Nicolas Michel** Legal Counsel, United Nations **Ms. Louise Fréchette** former Deputy Secretary-General; Centre for International Governance Innovation **Professor Hélène Ruiz Fabri** University of Paris I – Panthéon Sorbonne **Ms. Radhika Coomaraswamy** Special Representative of the Secretary-General for Children and Armed Conflict

6. The Security Council and the Rule of Law:
The Role of the Security Council in Strengthening a Rules-based International System

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Thursday, 1 November 2007, 1pm-3pm

Chair:	**H.E. Mr. Gerhard Pfanzelter** Permanent Representative of Austria to the United Nations
Introduction:	**H.E. Ms. Asha-Rose Migiro** Deputy Secretary-General, Chair of the Rule of Law Coordination and Resource Group
Presentation:	**Professor Simon Chesterman** New York University School of Law
Commentators:	**H.E. Mr. Juan Manuel Gómez Robledo** Vice-Minister for Multilateral Affairs and Human Rights of Mexico **H.E. Mr. Christian Wenaweser** Permanent Representative of the Principality of Liechtenstein to the United Nations

7. The Security Council and the Rule of Law:
Presentation of the Final Report of the Austrian Initiative

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Monday, 7 April 2008, 1pm-3pm

Welcome:	**H.E. Mr. Srgjan Kerim** President of the 62nd UN General Assembly
Chair:	**H.E. Mr. Gerhard Pfanzelter** Permanent Representative of Austria to the United Nations
Introduction:	**H.E. Mr. Hans Winkler** State Secretary for European and International Affairs of the Republic of Austria
Presentation:	**Professor Simon Chesterman** New York University School of Law

5. The Security Council and the Individual:
Rights and Responsibilities

Dag Hammarskjöld Library Penthouse
United Nations Headquarters, New York
Tuesday, 27 March 2007, 3pm-5:30pm

Welcome:	**H.E. Mr. Gerhard Pfanzelter** Permanent Representative of Austria to the United Nations
Chair:	**Professor Thomas M. Franck** New York University School of Law
Panellists:	**Under-Secretary-General Nicolas Michel** Legal Counsel, United Nations **Ms. Louise Fréchette** former Deputy Secretary-General; Centre for International Governance Innovation **Professor Hélène Ruiz Fabri** University of Paris I – Panthéon Sorbonne **Ms. Radhika Coomaraswamy** Special Representative of the Secretary-General for Children and Armed Conflict

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Presentation:	**Professor Simon Chesterman** New York University School of Law

Appendix II:
Alpbach Retreat: The Security Council and the Rule of Law, 25–27 August 2007

European Forum Alpbach: Panel Discussion on "The Security Council and the Rule of Law"

Alpbach Conference Centre
European Forum Alpbach, Austria
Monday, 27 August 2007, 9am-10.30am

Chair: **H.E. Mr. Hans Winkler**
State Secretary for European and International Affairs
of the Republic of Austria

Panellists: **H.E. Mr. Bruno Stagno Ugarte**
Minister of Foreign Affairs and Worship of the
Republic of Costa Rica
H.E. Prince Zeid Ra'ad Zeid Al-Hussein
Ambassador of the Hashemite Kingdom of
Jordan to the United States of America
H.E. Mr. Ismael Abraão Gaspar Martins
Permanent Representative of the Republic of
Angola to the United Nations